

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1647

KA 06-00771

PRESENT: MARTOCHE, J.P., SMITH, CENTRA, GREEN, AND PINE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CHRISTIAN TABB, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (MARY GOOD OF COUNSEL),
FOR DEFENDANT-APPELLANT.

FRANK J. CLARK, DISTRICT ATTORNEY, BUFFALO (RAYMOND C. HERMAN OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Penny M. Wolfgang, J.), rendered March 22, 2006. The judgment convicted defendant, upon a jury verdict, of assault on a peace officer, police officer, fireman or emergency medical services professional and assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict, inter alia, of assault on a peace officer, police officer, fireman or emergency medical services professional (Penal Law § 120.08). Viewing the evidence in light of the elements of the crimes as charged to the jury (*see People v Danielson*, 9 NY3d 342, 349), we conclude that the verdict is not against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495). The jury was entitled to credit the testimony of the People's witnesses and to reject defendant's justification defense (*see generally People v Inguaggiato*, 267 AD2d 248, *lv denied* 94 NY2d 921; *People v Green*, 240 AD2d 513, *lv denied* 90 NY2d 940). Defendant failed to preserve for our review his contention that the evidence of serious physical injury is legally insufficient to support the conviction of assault under Penal Law § 120.08 (*see People v Hines*, 97 NY2d 56, 61, *rearg denied* 97 NY2d 678), and we conclude that the sentence is not unduly harsh or severe. Defendant failed to preserve his remaining contentions for our review (*see CPL 470.05 [2]*), and we decline to exercise our power to review those contentions as a matter of discretion in the interest of justice (*see CPL 470.15 [6] [a]*).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court